Supreme Court, U.S.
F I L E D
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CASE NO. 86-83

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1986

LORENTZ W. HANSEN,

PETITIONER,

- v. -

PRENTICE-HALL, INC.,

RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITIONER'S REPLY BRIEF

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ARGUMENT

RESPONDENT'S REASONS FOR DENYING THE WRIT ARE UNSUPPORTED EITHER BY THE RECORD OR APPLICABLE LAW

Respondent's Brief in Opposition is in error in asserting that petitioner abandoned his contention of prior notice

or that petitioner was "confronted" by facts showing he could not have given respondent notice prior to the date of publication. The "notice" given to respondents (and other law publishers, including Commerce Clearing House) was to the effect that portions of the original opinion in question were libelous and that petitioner intended to make a motion for reconsideration. In fact, as the record shows (A-117), Commerce Clearing House, publishers of tax reports similar to respondents, did not print the original version. Since respondents' counsel carefully avoided submitting any affidavits whatsoever of persons having actual knowledge of the facts, as required by F.R.C.P. 56(e) in support of a motion for summary judgment, but submitted only his own affidavit, the full circumstances in this and other respects surrounding

publication of the original opinion by respondent were never made clear. In any event the existence of a "notice" prerequisite, suggested in the opinions below and by respondent, is unheard of in the law of defamation and would impose an impossible burden in the circumstances here present (and probably in every case) in view of the large number of potential publishers of reports, verbation and otherwise, of judicial proceedings. The victim of the defamatory statements might not even know of the existence of many potential publishers including publishers of law reports, law reviews, law journals, newspapers, magazines, etc.

The cases cited by respondent in opposition to this petition, Lee v. Brooklyn Union Publishing Co., 209 N.Y. 245 (1913) and Lowenschuss v. West Publishing Co., 542 F.2d 180 (3d Cir. 1976),

involved reports of judicial proceedings that were admittedly "full fair and impartial." These cases therefore differ materially from the present case. By contrast, the "old" cases relied on by petitioner - Stevenson v. News Syndicate Co., 302 N.Y. 81 (1950) and Lewisohn v. Dial Press, Inc., 264 App.Div. (1st Dep't 1942) involved reports that were admittedly not "full, fair and impartial." There is no reason either in the statute (New York Civil Rights Law Section 74) or in logic or policy for distinguishing a verbatim publication of a court opinion from a newspaper account of a court opinion. Either, although originally "full, fair and impartial", can be rendered inaccurate by later events in the judicial proceeding concerned. This is the true holding in Stevenson, supra, and Lewisohn, supra, which correctly - and narrowly, in

accordance with precedents - construed the New York State statutory privilege in issue and which the lower courts herein should have unquestioningly followed pursuant to 28 USC 1652. (In this regard, the first sentence on page 3 of respondent's Brief in Opposition herein, under "Reasons for Denying the Writ", would read more accurately if, for the word "subsequently" on line 5, the word "previously" were to be substituted.)

CONCLUSION

The deletion that is the subject of this controversy clearly and unequivocally implied to readers - lawyers and accountants - that petitioner herein was guilty of suborning perjury - a felony crime under the United States Code. In view of the strictures and prejudices against advertizing, etc., by members of

the Bar, this Court is respectfully requested to intervene on behalf of petitioner herein, whose reputation at the time of the defamatory statement in issue was predicated on 20 years of hard work and professional integrity.

Respectfully submitted,

Lorentz W. Hansen

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